

On the Reform of the Court Sub-volume System

-- with the Lawyer's Right to Read the Volumes as an Entry Point

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Abstract: Court Sub-volume System is our court in practice the formation of customary system, there is no clear legal basis, sub-volume content more than the main volume, containing the authorities that need to be kept confidential materials and comply with the principle of confidentiality of the sub-volume is not available to the public. Among them, the approval of the judgment, the panel transcripts, the trial committee discussion transcripts are the unique content of the sub-volume. However, behind the creation of these contents there is an unreasonable approval and request, “joint but not deliberative” collegiality and “trial, judgment separation” of the trial committee involved in the problem, can not maintain the legitimacy of the content. With the advancement of judicial reform, many scholars have advocated the abolition of the system itself, as well as the disclosure of the sub-volumes to be monitored by society. However, the lack of practicality, the system has existed for a long time is difficult to be abolished at the present time, the majority of judges opposed to the public and the public damage to the credibility of the judiciary. At present, the correct logic of reform should be to retain the system on the premise of promoting the right of lawyers to read files to cover the materials in the sub-volume, at the same time, standardize lawyers’ duty of confidentiality, and give them the right to object and set up a review system of the court's sub-volume, to establish a set of lawyers to supervise the functioning of the court's sub-volume system mechanism. This mechanism, based on the internal oversight of the legal profession, can provide an effective guarantee of the legitimacy of the sub-volume.

Keywords: Sub-volume; Supervision; Lawyer's right to read volumes; Lawyer's duty of confidentiality

I. INTRODUCTORY

Under existing law, the materials in the main volume of a case are open to the public on the premise that they do not affect the trial, while the materials in the sub-volume are strictly confidential to the outside world. With the “Liu Suqin case” sub-volume leakage events, we have to think about the rationality of the court sub-volume system.

Liu Suqin is the original legal representative of Hohhot Donghuayao real estate development limited liability company, June 2019 was detained, in March 2023, in the “Liu Suqin black case” before the second trial, Tongliao Central Court, a clerk mistakenly “sub-volume” to the CD-ROM. In March, a clerk at the Tongliao Central Court mistakenly sent a “secondary volume” in the form of a CD-ROM to a defense lawyer, sparking a social controversy. The so-called “sub-volume” in this incident was the internal minutes of the Inner Mongolia High Court, Tongliao Intermediate Court and Tongliao Naiman Banner Court on the case. Among them, the Inner Mongolia High Court, Tongliao Intermediate Court and other relevant persons in charge had expressed the “four characteristics of black involvement is not obvious”, “the case is inherently insufficient” and other views. Subsequently, the Tongliao Intermediate Court judge to the case of the defense lawyers that the minutes of the case is the case of sub-volume materials, lawyers' right to read volumes, requiring lawyers to complete the return of sub-volumes, but did not succeed in recovering. One of the defense lawyers claimed that the minutes of the meeting contains the Inner Mongolia, Tongliao, Naiman Banner Court judges know that the case is not enough to black, but ultimately ruled on the inside of the black^[1]. Due to the leakage of the “CD-ROM sub-volume”, the defense used the information contained therein to reverse the passive situation of the defendant. In the end, the second trial verdict revoked the original verdict of the crime of involvement in the black, and sentenced Liu Suqin and Liu Changzheng to fixed-term imprisonment, and Liu member (Liu Suqin's brother) and other eight people were not guilty. Imagine if the small probability event of the lawyer not having access to the sub-volume had not occurred, the wrongful conviction of the first trial would not have been corrected, thus producing a wrongful conviction.

Undoubtedly, after this incident, the court will definitely strengthen the confidentiality of the sub-volume, and the leadership will be more careful in internal meetings to prevent the

^[1] “Liu Suqin case” defense lawyer Jin Xiaoguang expressed views to the ‘China News Weekly’. “The Walker of Joy”, ‘Tongliao Liu Suqin Case: ‘Black-related Case’ in the ‘Sub-volume Door’”, in Zhihu Platform, <https://baijiahao.baidu.com/s?id=1761046898322000917&wfr=spider&for=pc>, last accessed June 8, 2023.

leakage of the sub-volume and avoid future problems. However, with the theme of “judicial openness” increasingly popular, the court sub-volume absolute confidentiality has been challenged to strengthen the confidentiality of the sub-volume has become an obstacle to judicial progress “stumbling block”. “Liu Suqin case” sub-volume leak reminds us that the reform of the system can not be delayed.

For the reform of the court's sub-volume system, some scholars advocate the abolition of the system and public sub-volume, so that the sub-volume “lying in the sun”, so that the public can access the content of the sub-volume, so that the entire court case file system to get the social supervision. For example, Prof. Yin Bo of the School of Criminal Justice of the China University of Political Science and Law, in his article “The Court Sub-volume System: Remnants of Classism”, states that the existence of the sub-volume is contrary to the spirit of the rule of law and that the sub-volume system must be abolished^[2]. But currently, is abolition the most appropriate path to reform? Should the system be abolished or retained? Is there a more practical solution to the problem under the retention system than radical abolition? And if there is, how to construct the practical application of this method? The author has carried out relevant research in Weiyang District Court, Chang'an District Court and High-tech Dispatch Court of Xi'an Municipal Intermediate Court in Xi'an City, Shaanxi Province, to propose a new path of reform of the court sub-volume system and try to answer.

II. CONTENTS AND MATERIALS OF THE COURT'S SUB-VOLUME

Sub-volumes refer to court sub-volumes, procuratorial internal volumes, and investigative sub-volumes, which are enriched by the main volume and contain subjective materials that the authorities consider to be in need of confidentiality^[3]. The court sub-volume system has no clear basis in China's law, and is only reflected in some normative documents of lower rank.

After research, the author found that in the materials recorded into the sub-volume, in addition to the same content as the main volume^[4]. If the case goes to the second trial, it also

^[2] Yin Bo: “The Court Sub-volume System: a Remnant of Classism”, published in “Democracy and the Legal System (Weekly)”, issue 11, 2017.

^[3] Chen Peiwen: “On the Necessary Limits of Judicial Disclosure-Analysis with a Focus on the Sub-volume System”, published in “Journal of Chengdu University of Science and Technology (Social Science Edition)”, issue 4, 2016.

^[4] The same content of the sub-volume and the main volume: indictment, defense, power of attorney, trial transcripts, judgments, delivery receipts, etc.

includes the exchange of opinion sheets, the approval of the second trial judgment, the draft and the original, and if the case is discussed by the trial committee, the transcripts of the trial committee's discussion must also be recorded in the sub-volume^[5]. Among them, the judgment approval is actually a request and approval within the court system, and in a few cases, it also includes the opinions of superiors and relevant leaders, in addition to the collegial transcripts and the transcripts of the trial committee's discussions, as a key step in the formation of the judgment, which can directly embody the will of the judges. Therefore, these three pieces of content is not only the unique content of the sub-volume, but also the most prominent features of the difference from the main volume, the following are introduced:

i. Judgment Approval

According to article 2 of *the Implementing Measures on Intervention and Meddling by Leading Cadres in the Handling of Cases*, issued by the Supreme Court in 2015, the term “materials” refers to sub-volume materials^[6].

However, the Implementation Measures only stipulate that irregularities such as interventions and requests shall be recorded in the sub-volume, and do not stipulate whether internal court reviews, approvals, and opinions of superiors and relevant leaders generated through normal procedures shall be recorded in the sub-volume. Therefore, the approval of the judgment within the same court into the sub-volume has no legal basis, but only the court's customary practice. The formation of upper and lower level reviews and approvals within the same court occurs when the case will be finalized, and the case undertaker will report the matters related to the trial layer by layer until the president, in which each superior can write his or her opinions and instructions on the trial of the case in the table, and in a few cases, they

^[5] The author was in the archives room of the Hi-Tech Dispatch Tribunal of the Xi'an Municipal Intermediate People's Court with the judge's assistant on August 17, 2023 and learned about the matters recorded in the sub-volume. The exchange was informed of the matters recorded in the sub-volume, but did not read the documents of the sub-volume materials of the individual cases.

^[6] Article 2 of *The Measures for the Implementation of the Provisions on the Recording, Notification and Accountability of Interference in Judicial Activities by Leading Cadres in the Handling of Specific Cases by the People's Courts*: “Where organizations or individuals outside the People's Courts transmit letters, correspondence, or verbal opinions relating to specific cases outside the context of litigation proceedings, the staff of the People's Courts shall record them in a comprehensive, truthful, and timely manner, and retain the relevant materials so that the whole process is traceable and permanently stored in a documented manner. And retain the relevant materials, so that the whole process to leave traces, permanent storage, and evidence can be found. Where a leading cadre makes a request to a people's court for the handling of a case on behalf of an individual or an organization, or where a staff member or relative of a leading cadre interferes in judicial activities or in the handling of a specific case, the people's court shall make a record of it and retain the relevant materials.”

will also take the way of verbal expression^[7]. In addition, materials generated by case requests between upper and lower courts are also included in the scope of the sub-volume, and the case request system refers to the system whereby lower courts request higher courts to respond to difficult substantive or procedural issues that arise in the course of the trial^[8]. The system has no legal basis and has only been recognized by the Supreme Court.

ii. Transcript of the Full Court

The transcript of the Full Court contains the views and opinions of all panel members on the handling of the case and the judgment. The transcripts are included in the sub-volume, on the one hand, in order to maintain the privacy of the collegiality of the deliberations, and on the other hand, in order to ensure that the divergent views of the minority members are not publicized, in accordance with the principle of the “minority submits to the majority”. When a court adopts a collegial system of adjudication, it assigns the presiding judge as the organizer, who is responsible for the quality of the case, and, with reference to the organizer's opinion, appoints the presiding judge to assume the main adjudicative role and to be responsible for the specific process of adjudication of the case.

iii. Transcript of the CRIC Discussion

Article 185 of the *Criminal Procedure Law* stipulates the trial role of the trial committee, which enjoys the right to make indirect decisions on judgments in major difficult and complex cases in accordance with the law^[9]. The operating procedures of the trial committee system are: if the trial court believes that a case needs to be submitted to the trial committee for discussion and decision, it needs to report to the judge undertaking the case, and the judge undertaking the case will decide whether or not to apply to the president, who will ultimately decide whether or not to organize a discussion of the trial committee; in the absence of such an application, the president, if he or she deems it necessary, may also request the organization of a discussion of

^[7] Li Shuai: “Study on the Openness of Court Sub-volumes under the Perspective of Judicial Reform”, published in “Yunnan Social Science” Issue 5, 2018.

^[8] Jiang Guohua, Lai Yanjun: “Guarantee Mechanisms for Judges to Independently Exercise Judicial Power in accordance with Law”, published in “Journal of the Harbin Institute of Technology (Social Science Edition)”, Issue 3, 2020.

^[9] Article 185 of the *Code of Criminal Procedure*: “After a hearing and deliberation by a collegial panel, the panel shall render a judgment. In difficult, complex or important cases, if the collegial panel finds it difficult to reach a decision, it shall refer the case to the President for a decision to be submitted to the Trial Committee for discussion and decision. The decision of the Trial Committee shall be implemented by the panel.”

the trial committee to make a decision. The CRIC discussion also follows the principle of “majority rule” to generate the final opinion of the CRIC on the case. The CRIC discussion must produce a transcript of the CRIC discussion, which is similar in form to the collegial court transcript.

III. PROBLEMS AND SHORTCOMINGS OF THE COURT’S SUB-VOLUME SYSTEM

i. “Administrative” for the Judgement Approval System

The author believes that, at this stage, China's courts have the problem of insufficient judicial resources, the members of the court to take the president, president and other administrative grading is necessary, the court needs to use a certain amount of administrative management, in order to improve the efficiency of the case processing, the ultimate goal is to ensure that all the work of the court is carried out in a normal and orderly manner. However, the necessity of administration can only be directed within a single court, and a negative attitude must be firmly held towards the administrativeization between upper and lower courts^[10].

First of all, for the review and approval within the same court, combined with the above viewpoints, the existence of an administrative leadership relationship between the upper and lower levels within the same court can support the reasonableness of the upper and lower level review and approval within the same court, and if there is any overly subjective, detached from the law, or abusive viewpoints in it, it can be corrected by way of hierarchical upward reporting. However, it does not rule out the possibility of multiple superiors giving similar erroneous instructions that cannot be corrected. Secondly, the system of requesting cases between upper and lower courts shows greater disadvantages than within the same court, and the system is a typical product of administrativeization between upper and lower courts. The biggest problem with the system is that it violates the two-tier system of final adjudication and hollows out the parties' right to appeal. China's upper and lower courts is a supervisory relationship rather than leadership, and the law also has a supervisory relationship for the system structure and called

^[10] Long Zongzhi: “The Main Contradictions and Pilot Proposals for the Reform of the Positioning of Trial Functions”, published in “China Law Review”, issue 2, 2022.

trial supervision, such as the second trial, trial supervision (retrial) procedures, and death penalty review procedures, etc., the case request system does not belong to the trial supervision, in fact, the case has crossed the supervision of the trial, the proposed case request the administrative links between the upper and lower courts^[11]. The higher courts were implicitly and tangentially involved in the formation of the first-instance judgment and played a huge role, violating the principle of trial independence.

The requests, approvals, and opinions generated in these two processes are categorized by the court as internal information and are recorded in the materials of the sub-volume in accordance with the principle of non-exposure of internal information, and cannot be monitored.

ii. “Collegiality without Deliberation” for the Full Court System

The collegial court transcript in the collegial court system, but the collegial court system in practice, the problem of “joint but not deliberative”, and the problem in the collegial court of the people's jurors is particularly prominent, which will lead to the transcript of the judgement recorded by the formation of the process of the lack of sufficient deliberation, can not achieve the exercise of the trial right to play the maximum benefit effect.

“Joint but not deliberative” is the collegial members of the case of asymmetric information. Members of the collegial panel bear the objective facts based on the fair and impartial expression of their own opinions, views of the responsibility, and the fulfillment of this responsibility needs to be established in the members of the case on the basis of a full understanding of the relevant information, but the court's management of the contractor judge for the collegiality, deliberation increased obstacles. Although the contractor judge of a specific case does not directly participate in the trial of the case, the participation of the contractor judge runs through the process of receiving the case, trial, deliberation and judgment, indirectly grasping the richest information resources of the case^[12]. In addition, the contracting judge has the obligation to report to the presiding judge, and the presiding judge enjoys the

^[11] Shi So: “Corruption Crime Investigation Case Request System Case Referral System in the Investigation of Corruption Crimes”, published in “Legal Science (Journal of Northwest University of Political Science and Law)”, issue 3, 2022.

^[12] Li Changchao, Zhan Liang: “Rational Reflection and Institutional Construction of Collegial Deliberation System”, published in “Journal of the Hubei Institute for Nationalities (Philosophy and Social Sciences Edition)”, Issue 3, 2017.

right to decide on the handling of the reported matters, so the presiding judge not only has a full understanding of the information about the case, but also decides on the way to handle this information. This results in an asymmetrical and unequal situation between the contracting judge, the presiding judge and other judges and people's jurors in terms of understanding and handling of case information. Although collegial deliberation requires joint deliberation and decision-making in accordance with the principle of "majority rule", the asymmetry of information within the collegial panel makes it impossible for the weaker parties (other judges and jurors) to express their views on the case in an adequate and objective manner. In addition, most of the people's assessors have not been trained in legal quality, and their level of case adjudication is limited, making it difficult for them to process the case information in order to form legal conclusions^[13]. Therefore, the other members of the collegiate court is often simply as the presiding judge, reduced to the trial of the appendage, accompaniment status. And then appear collegial court members although jointly hear the case, but the direction of the case judgment by the contractor judge, the presiding judge to dominate the status quo^[14]. The sub-volume secrecy provides the best shelter for the "joint but not deliberative" collegial court transcripts.

iii. "Separation of Trial and Judgement" for the Trial Committee System

The trial committee system was initially created to ensure that the courts were impartial, neutral, accurate and efficient in adjudicating cases, and played an important role in determining the standards of adjudication and improving the quality of trials in China. But with the development of the times, the trial committee system gradually exposed defects. One of the most controversial is: the trial committee does not enter the trial and the collegial court dominated the trial, the trial committee to make a judgment decision and the collegial court must be implemented, these two contradictions through the existing law can not be reconciled by the trial and the judgment of the phase of the separation of the problem.

"Trial, judgment separation" leads to the trial committee discussion, decision lack of 'personal'. "Judicial experience" to the principle of direct speech as the basic requirements,

^[13] Ma Chengui: "The Dilemma, Reflection and Way Forward of the Reform of Collegial Trial Responsibility System," published in "Jurisprudence Foreword (Collected Issues)", issue 2, 2023.

^[14] Dang Zhenxing: "People's Juror System of the Reality of the Dilemma and Improve the Path," published in "Journal of the Southwestern Petroleum University", issue 4, 2020.

the realization of direct speech need to be personally involved in the formation of the decision process, the decision must be absorbed by the parties to the impact. In our country, the parties and the trial committee is completely separated, can not contact, the trial committee to obtain the case information relies on the contracting judge's oral report and the submission of written materials, including but not limited to the case file, evidence, video of the trial, etc^[15]. So the influence of the parties is excluded. In turn, two extreme situations may arise^[16]. In the first case, since most of the members also hold administrative leadership positions in the court and are not directly involved in court hearings, they are often unable to carefully study the relevant written materials before the Trial Committee meeting, and are even unable to listen to the oral report of the contractor judge in person, so in the Trial Committee discussion, the members lack certainty and are often biased in favor of adopting the opinions that have already been formed with the integrity of the logic of the results of the collegial panel's deliberation; in the second case, most of the cases that enter into the Trial Committee discussion are major disputes. In the second case, into the CRIC to discuss most of the major difficult and complex cases, the CRIC is mainly responsible for solving the task of the application of the law, but for any case, the facts of the case and the application of the law will inevitably be combined with the consideration of the members of the lack of "first-hand experience" so that the CRIC meeting in the side of the hearing, thinking, decision-making process held, so the members of the Case facts are not clear enough, in addition, the members understand the case is relayed by the contractor judge, conveyed, which will inevitably be mixed with the contractor judge's personal tendencies, the content of the contractor judge's personal knowledge, emotions, experience and other subjective factors, reporting and materials can not be a complete coverage of the case, which may lead to the trial committee to make a one-sided, erroneous decision to replace the panel's opinion. Such operation will undoubtedly increase the rate of wrongful convictions, for example, Zhejiang Zhang's uncle and nephew rape and murder case, the court of second instance collegial tribunal that the suspicion of innocence, should be sentenced to uncle and nephew should be acquitted, but the case was submitted to the trial committee to discuss the

[15] Shanxi province Jincheng city intermediate people's court group (Yu Changming, Li Qiuhong, Li Yonggang): "Judicial Pro-experience under the Perspective of the Reform of the Hearing System of the Trial Committee", published in the "People's Justice", issue 22, 2022.

[16] Xu Xianghua's group (Xu Xianghua, Zhang Yu, Lin Yan, Lu Yang): "Empirical Study on the Reform Path of the Trial Committee System", published in "China Law Journal", issue 2, 2018.

case, and ultimately wrongly sentenced Zhang Hui suspended death sentence, Zhang Gaoping life imprisonment. The transcripts of the trial committee's discussions under the “separation of trial and sentencing” trial committee system will reflect the problems that arose during this process, but they are not authorized to be made public as part of the sub-volume.

IV. PROBLEM-SOLVING PATHWAYS ANALYSIS

i. Public Court Sub-volumes

For some scholars to abolish the system of sub-volume and the views of the public sub-volume for social supervision, the author believes that there is a lack of feasibility at the present time, there are three reasons as follows:

i.1 The System has been in Place for a Long Time and has become a Judicial Habit that is Difficult to Abolish

As noted above, the system of court sub-volumes exists only in low-ranking normative documents, which lack sufficient legal force. The following table illustrates the development of the system of court sub-volumes:

Year	Regulations	Details
1984	"People's Court Litigation Document Filing and Archiving Regulations"	Article 16: "Whether the litigation documents of a case should be divided into a main volume and a supplementary volume shall be determined by the higher people's courts of each province, city, and autonomous region according to the actual needs of the court system in their respective areas."
1990	"Provisions of the Supreme People's Court on Keeping Trial Secrets"	Article 5: "The classification, binding, and filing of case materials must be distinguished between internal and external, and the main and supplementary volumes must be established according to regulations. The requests, replies, leaders' instructions, opinions from relevant units, records of the collegial panel's discussion of the case, records of the judicial committee's discussion of the case, case reports, and written materials soliciting opinions from relevant

		<p>courts and units on the handling of the case must be bound in the supplementary volume. Materials in the supplementary volume shall not be accessed by any unit or individual without work-related reasons and without the approval of the court's leadership."</p>
1991	<p>"People's Court Litigation Document Filing and Archiving Regulations"</p>	<p>Article 4: "All types of litigation documents of the people's courts should be divided into main and supplementary volumes according to the principles of confidentiality and convenience."
 Article 21: "The order of arrangement for the litigation documents in the supplementary volume of various cases: (1) Volume cover; (2) Volume index; (3) Reading notes; (4) Review report by the case handler; (5) Materials or records of internal discussions with relevant departments; (6) Internal requests and replies concerning this case; (7) Records of the collegial panel's discussion of the case; (8) Records of the court's research and report on the case; (9) Records of the judicial committee's discussion; (10) Original and official versions of the case summary report; (11) Originals of judgments and rulings; (12) Judicial supervision forms or opinions for retrial; (13) Other materials not suitable for public disclosure; (14) Preparation table; (15) Volume bottom."</p>
2003	<p>"Notice on the Operation Procedures for the Collection, Organization, Filing, and Borrowing of Litigation Archives"</p>	<p>Filing includes the division into main and supplementary volumes, volume cover, volume index, and the filling and binding of the preparation table. All first-instance, final, retrial, and review cases handled by our court, as well as petitions with substantive opinions for retrial, must be divided into main and supplementary volumes. Materials that are not suitable for public disclosure and need to be kept confidential should be filed in the supplementary volume, which is not accessible for external consultation.</p>

2006	"People's Court Enforcement Document Filing and Archiving Regulations (Trial)"	Article 14: "Enforcement files should be divided into main and supplementary volumes according to the principles of confidentiality and convenience. Cases without content unsuitable for public disclosure may not need a supplementary volume." Article 20: "The order of arrangement for the documents in the supplementary volume of various enforcement cases: 1. Volume cover; 2. Volume index; 3. Reading notes; 4. Enforcement plan; 5. Materials or records of internal discussions with relevant departments; 6. Internal requests and replies concerning the case; 7. Instructions from higher courts and relevant unit leaders on the case; 8. Handler's review report; 9. Records of the collegial panel's discussion of the case; 10. Records and meeting minutes of the execution bureau (court)'s case research; 11. Records and meeting minutes of the judicial committee's case research; 12. Legal document issuance copies; 13. Other materials not suitable for public disclosure; 14. Preparation table; 15. Evidence bag; 16. Volume bottom."
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The provisions of these documents are general and fragmented, and do not build a system of operation of the sub-volume system, but because of the above 1991 documents clear organs of the absolute confidentiality of the responsibility of the sub-volume^[17], resulting in has been the court custody of sub-volume lack of effective supervision mechanism, regardless of confidentiality content or the scope of confidentiality in the wild growth, and further led to the courts in our country in the implementation of the document nearly 40 years of time autonomy derived from a number of unwritten rules, habits of the sub-volume, so that the sub-volume system is deeply rooted in our country's judicial system for the abolition of the great obstacle.

i.2 Majority of Judges Oppose Disclosure of Sub-volumes

The majority of judges, especially grass-roots judges who are subject to a huge caseload, are opposed to the disclosure of sub-volumes. First of all, judges, as one of the exercisers of

^[17] Liu Renwen: "On the Reform of the Court's Sub-volume System in China", published in the "Law Review (Bimonthly)", issue 1, 2017.

national public power, have a natural rejection of supervision inherent in the public profession. In human society, there is a tension between the supervised and the supervisor, and no one is born willing to be supervised, and this is especially true of judges as judges^[18]. The reason why the supervisory mechanism can operate effectively and play a regulatory role is that the power organs have to give part of the public and work information in exchange for the support and trust of the public, on the other hand, the public also has to contribute part of the private information to ask for the protection and help of the power organs. However, this kind of giving and contributing is a dynamic and balanced relationship, the giving party and the contributing party can't be completely voluntary, and each other hopes to use the smallest sacrifice to exchange for many rewards. Secondly, the heavy workload of judges in China, it is difficult to bear the pressure of sub-volume disclosure. The main sub-volume, first of all, requires judges to make the documents more highly refined, so that the general public can understand, but because of the existence of the judicial status quo of "too many cases, too few people", the judges to perform trial duties at the same time can not be in the paperwork to invest too much energy.

i.3 Publicly Undermining the Credibility of the Judiciary and Generating Social Skepticism

In the Zhou Cheng case in 2005, a leak of the court sub-volume revealed the truth about the injustice suffered by the defendant Zhou Cheng. After Zhou Cheng had completed his sentence, he accidentally obtained a copy of the court sub-volume of the case, which showed that he had been forcibly convicted of misappropriation of public funds and sentenced to five years' imprisonment, despite the fact that the relevant procurators and judges had all held an opinion of innocence. The author has gathered some inside information recorded in the case's sub-volume^[19]. The statements made by the vice president of the Benxi Intermediate People's Court, the court of second instance in the case, other leaders and the presiding judge at the meeting, as well as the practice of the trial committee, are chilling^[20]. Obviously, the case was

^[18] Li Shuai: "Study on the Publicization of Court Sub-volumes under the Perspective of Judicial Reform", published in "Yunnan Social Science", issue 5, 2018.

^[19] Dong Wei: "A Trial Swayed by Extra-Legal Forces," published in "China Youth Daily", p. 3, December 7, 2005.

^[20] The vice president of the Benxi Intermediate People's Court, the court of second instance in the case, said, "If we consider the social effect of the crime, we can find the guilty, but at present the evidence for the conviction is lacking, so we need to report it to the higher level, and ask the leaders to decide." Another leader at the meeting said to the judge: "Do not easily put off the case, no superior's opinion do not undergo judgment, to report. Then the Ping Shan District Court to study again." Immediately thereafter, the trial committee of the Central Court met and

interfered with by forces outside the law, leaving an innocent person unjustly imprisoned.

Under the current institutional system, the opinions and recommendations of “superiors” on a case are in order, but because of leadership relationships, work relationships, and even human relationships, these opinions and recommendations are often transformed into demands. And sub-volume confidentiality for these requirements outside the law to provide a hard “shell”, so that they can be silent, unobtrusive influence on the trial and other judicial work. At present, if the requirements of the sub-volume public, with the buried secrets in the previous volume surfaced, it is likely to hit the public confidence in the judiciary, and then damage the credibility of the judiciary^[21]. If the choice of non-retroactive disclosure is made, although it can obscure the negative impact of the secrecy of the old case sub-volumes, it will violate the equality rights of the parties to the old case, create unfair treatment to the defendants in the old case and their relatives and other relevant people, and may even be labeled as “invalid disclosure”, forcing the judicial system to endure tremendous pressure.

ii. Improvement of Lawyers' Right to Read the Volumes and Regulation of Lawyers'

Duty of Confidentiality

ii.1 Improving Lawyers' Right to Read Volumes and Breaking up Zero Access to Sub-volumes

ii.1.1 China's Lawyers' Right to Read Volumes of Legal Provisions

China's legislation on lawyers' right to read volumes is scarce, but still reflects the fact that the right to read volumes is limited to the materials in the main volume and cannot be extended to the sub-volumes. Article 38 of the *Criminal Procedure Law* directly regulates the defense lawyers' right to read volumes^[22], and article 37, paragraph 4, sets out the time

unanimously agreed to uphold the original verdict. Subsequently, Zhou Cheng's appeal was immediately rejected, sub-volume recorded the second trial presiding judge Zhang Xiaowei's real reason for dismissal: “From the legal theory I think the defendant in this case, Zhou Cheng does not have the crime of misappropriation of public funds to establish the elements of the crime, but this case has been convicted in the first trial. Considering that this case has been the subject of much attention and inquiry by the relevant departments and other parties, I agree with the conviction and sentence of the original trial, and therefore dismiss the appeal and affirm the original sentence.”

^[21] Yang Zhi, Deng Hong: “Court Litigation File ‘Sub-volume’ Reform Path Analysis - Based on the Grassroots Level Analysis and Scrutiny of the Court's 300 Litigation File 'Sub-volumes'”, published in “Law Application”, Issue 7, 2017.

^[22] Article 38 of the *Criminal Procedure Law*: “From the date on which the people's procuratorate examines and prosecutes a case, a defense attorney may inspect, excerpt or copy the materials in the case file. Other defenders, with the permission of the people's court or people's procuratorate, may also inspect, extract and copy the said materials.”

requirements for defense lawyers to verify the evidence with their clients^[23]. However, the *Criminal Procedure Law* does not clarify the specific meaning of “case materials”, although the “Rules of the Higher Prosecution Service” specify them as litigation documents and evidence. In China, the defense attorney is able to access the prosecution in the proceedings and the statutory 8 evidence^[24], and audio-visual recordings, technical reconnaissance and other materials, by the procuratorate according to the prosecution to decide whether to use as evidence, if not evidence is not allowed to access^[25]. In practice, prosecutors often file these materials in the prosecution's internal file.

In addition, article 53 of the *Interpretation of the Criminal Procedure Law* issued by the Supreme Court^[26] Indicates that the right to read the case file cannot cover the transcripts of the discussions of the collegial court and the trial committee. Therefore, the judicial interpretation of the *Criminal Procedure Law*, “case materials” for the limit, the last pocket of “other materials not open to the public in accordance with the law” for the judicial organs will be more other materials into the sub-volume to provide sufficient grounds, further limiting the lawyers' right to read volumes Exercise the scope.

ii.1.2 Benefits of Lawyers' Right to Read Volumes Covering Sub-volume Material

Promoting the lawyers' right to read volumes to cover the materials in the sub-volumes and allowing lawyers to exercise it until the end of the trial, rather than only before the trial, will give full play to the lawyers' role in monitoring the sub-volumes, and will regulate the improper manipulation of the sub-volumes.

First, as legal professionals, lawyers are in a better position to efficiently and accurately read the sub-volumes and to detect violations of the law than if the system were abolished and the sub-volumes were made public to enable social oversight. Secondly, as the agent and

^[23] Article 37, paragraph 4 of the *Criminal Procedure Law*: “From the date of the transfer of the case for examination and prosecution, the evidence in question may be verified with the suspect or defendant.”

^[24] Article 50 of the *Criminal Procedure Law*: “Materials that can be used to prove the facts of the case are evidence. Evidence includes: (a) physical evidence; (b) documentary evidence; (c) witness statements; (d) victim statements; (e) confessions and arguments of suspects and defendants; (f) opinions of appraisals; (g) transcripts of investigations, inspections, identifications, and experiments; and (h) audio-visual materials and electronic data. Evidence must be verified as true before it can be used as the basis for a conviction.”

^[25] Han Xu: “Lawyers Right to Defense Protection of the Way Out”, published in “China Reform”, issue 5, 2023.

^[26] Article 53 of the *Interpretation of the Supreme People's Court on the Application of the Criminal Procedure Law of the People's Republic of China*: “Defense lawyers may inspect, excerpt, or copy the materials in the case file. Other defenders may, with the permission of the people's court, also inspect, extract or copy case file materials. Records of the discussions of the collegial panel and the trial committee, as well as other materials that are not disclosed in accordance with the law, may not be inspected, excerpted or copied.”

defender of the client, access enables lawyers to check whether the contents of the subvolume infringe on the client's legitimate rights and interests, and to ensure that the client is subject to a fair and just judicial decision^[27]; as agents and defenders, lawyers' goal is to maximize the legitimate interests of their clients in the law, and lawyers are sufficiently motivated to conduct prudent access. In addition, the supervision of lawyers can promote the judicial organs to optimize the production of sub-volumes, improve the quality of sub-volumes, and eliminate the meddling and intervention of leading cadres. In addition, unlike the internal supervisors of the judicial organs, lawyers, as legal professionals outside the system to supervise, are not easily affected by the position of public power and will not be bound by the interests of the judicial organs. Finally, this kind of internal supervision of the legal profession can avoid the influence of the outside world, causing public opinion to distort the truth and destroying the image of the judiciary.

ii.1.3 Lawyers' Right to Read Volumes must Cover Three Pieces of Material

In order to facilitate lawyers' right to read volumes covering sub-volume material, it is of paramount importance that lawyers have access to the three pieces of material described above, which are open for inspection by the lawyers working on the case.

First, judgment approval. On the one hand, for the internal review and approval of the same court, lawyers should be allowed to access their internal records of approval of cases. On the other hand, for the case between the upper and lower courts, the request process generates a huge amount of material, including not only the lower court's request, transferred case materials, but also the higher court's acceptance of the records, personnel designated records, discussion records, approval records, processing opinions. If the lawyers' right to read volumes of all the materials, will make the lawyers' right to supervise too much, reduce the efficiency of the case at the same time also increase the work pressure of the higher and lower courts. Moreover, some of these materials are not highly relevant to the outcome of the case and do not require the dedication of resources, but it is possible for lawyers to abuse their right to object in order to delay the trial by objecting to multiple materials, disrupting the order of the proceedings and impeding the proper and expeditious conduct of the trial. Therefore, only

^[27] Guo Shuo, Ren Yuxing: "Research on the Court's Sub-volume System under the Threshold of Judicial Reform," published in "Judicial Think Tank", issue 2, 2021.

granting lawyers' right to read volumes of the materials most closely linked to the outcome of the case (dispositions issued by higher courts) is sufficient to fulfill the role of external supervision, and full coverage of the materials is not required. Abolition of the case request system is a distant goal, open up the right of lawyers to access the court approval, request for instructions and other materials can be avoided to a certain extent the collective approval of the problem of errors and make up for the shortcomings of the case request system.

Second, the panel transcript. Most of the scholars who hold the view of open sub-volume advocate the openness of collegial transcripts, so that justice becomes transparent and collegiality is subject to social supervision^[28]. In China, there is also a case where the court disclosed the transcripts of the collegial court, and the Shanghai Second Intermediate People's Court set out all the opinions of the collegial court in a civil judgment in 2002^[29]. The court has not only satisfied both parties with the formation of the judgment, but has also won a lot of social praise. But similar to the Shanghai second intermediate people's court public collegial transcripts of the situation is only China's judicial development on the road to a handful of examples. The collegial court transcripts as sub-volume content, according to the reasons mentioned above can not be made public, the desire for universal disclosure is not currently realized possibility. Compared with, prompting lawyers can contact collegial court transcripts, make collegial system operation by undertaking case lawyers supervision is more practical significance, lawyers' right to read volumes covering collegial court transcripts, lawyers have a channel to know the judgment formation process, can effectively restrain collegial deliberation process is not standardized.

Third, the trial committee discussion transcript. Similar to the collegial court transcripts, the same scholars who hold the view of openness advocate that the transcripts of the trial committee discussion should be made public^[30]. However, in addition to the reasons for not making it public mentioned above, the "separation of trial and judgment" that has characterized the CRIC system since its inception is also contrary to modern democracy. If it is left to social

^[28] Xiao Ke: "Regulating the Invisible Hand: Adjusting and Regulating Litigation Sub-volume under the Perspective of Judicial Openness", published in "Shanghai Law Studies", issue 3, 2020.

^[29] Liu Jian: "Shanghai Second Intermediate Court Creates the First Case of Dissenting Opinions of a Collegial Court Written into the Judgment," published in "Legal Daily", p. 1, Sept. 12, 2002.

^[30] Chen Peiwen: "On the Necessary Limits of Judicial Openness - to Analyze the System of Sub-volume as a Focus", published in the "Chengdu University of Science and Technology Journal (Social Sciences Edition)", issue 4, 2016.

supervision, although people are concerned about whether the content of the transcripts is legitimate, as the public's understanding of the trial committee system deepens, it will inevitably emphasize the non-democratic nature of the system itself. Compared with social supervision, the case undertaking lawyer supervision does not need to change the trial committee system as a precondition. Lawyers as an important participant in the operation of justice, well aware of the shortcomings of the trial committee system, but at the same time shoulder to maintain the dignity of the law of the professional mission, therefore, the lawyers profession is the pursuit of the existing legal framework to maximize the protection of the client's legitimate rights and interests of the goal, rather than obsessed with calling for a change in the legal system. Allow lawyers' right to read volumes to cover the trial committee discussion transcripts, in fact, is conducive to promote the reform of the trial committee system, to realize the "trial, judgment". Lawyers' right to read volumes can monitor whether there is any violation of law in the discussion of the trial committee, and at the same time give lawyers the right to object to the transcripts of the trial committee's discussion, which will increase the weight of the role of the collegial court in the making of the judgment.

ii.2 Regulating Lawyers' Duty of Confidentiality and Setting Limits to the Expansion of Access to Volumes

Lawyers' duty of confidentiality is one of the basic duties of lawyers in China's professional ethics of lawyers, which is both an agreed duty and a legal duty. Article 38 of the *Lawyers' Law* provides for exceptions to the types of secrets and duties of confidentiality that lawyers' duties of confidentiality entail^[31], article 46 of the *Criminal Procedure Law* provides for defense lawyers' duty of confidentiality and exceptions to the client's matters^[32], but overall China's law on lawyers' duty of confidentiality less legal provisions. While allowing lawyers to

^[31] Article 38 of the *Lawyers Law*: "A lawyer shall keep State and commercial secrets known in the course of his or her practice, and shall not disclose the privacy of his or her clients. Lawyers shall keep confidential the circumstances and information that the client and other people know in the practice of law do not want to disclose. However, except for the facts and information of crimes against national security, public security, and other serious harm to the personal and property safety of others that the client or other persons are preparing to commit or are in the process of committing."

^[32] Article 46 of the *Criminal Procedure Law*: "A defense counsel shall have the right to maintain confidentiality with respect to the circumstances and information concerning his client that he becomes aware of in the course of his practice. However, if, in the course of his or her practice, a defense lawyer learns that his or her client, or another person, is preparing to commit, or is committing, a crime that jeopardizes national security, public security, or gravely endangers the personal safety of another person, he or she shall promptly inform the judicial authorities of this."

read volumes of sub-volumes, must create corresponding lawyers' duty of confidentiality legal norms, for lawyers' right to read volumes cover sub-volumes set a gate.

ii.2.1 The Need for the Confidentiality Obligation

Prompting lawyers' right to read volumes to cover sub-volumes, lawyers will have more information related to the case, but based on the principle of confidentiality of the court's sub-volumes, lawyers should also fulfill the duty of confidentiality accordingly. The author learned some of the procedural matters concerning sub-volumes through court research^[33]: After a case is concluded, the sub-volume is consolidated and produced by the judge who heard the case, and then submitted to the contractor judge for review to determine that no adjustments are needed, and then, together with the materials in the main case file, is submitted to the archive room for safekeeping, which stores the main file and the sub-volume together but in a subdivided area labeled as such. Once the sub-volume is filed, no one else, including all judicial officers involved in the trial, may inspect the sub-volume, except the President of the Court and the officers of the Court outside of that case granted by the President or the officers of a higher court with the President's consent. Therefore, while determining that lawyers' right to read volumes of sub-volumes is established, it is also necessary to respect the spirit behind the principle of confidentiality of the sub-volumes, and shall not deviate from the meaning of confidentiality of the sub-volumes. The purpose of providing lawyers with access to the contents of sub-volumes is to establish “an extra-institutional supervisor” to ensure the legitimacy of the sub-volume, so that lawyers must and can only access the sub-volume with the sole objective of “supervision”. Lawyers' duty of confidentiality of sub-volume is to comply with the requirements of the basic goal of judicial maintenance of the public interest, whether it is an internal request, approval, suggestion or a variety of transcripts, or sub-volume and the main volume of the overlap of the content of the secret of the law^[34]. The enforcement of strict confidentiality on these matters is based on considerations of public interest and a balancing act between legitimacy and sensitivity.

^[33] The author learned this on August 23, 2023, through exchanges with the vice president of the criminal trial court at the Weiyang District Court in Shaanxi Province and with the case file room manager at the Chang'an District Court in Shaanxi Province.

^[34] Xu Ran: “A Comparative Study of the Lawyers' Duty of Confidentiality”, published in “Journal of Political Science and Law”, issue 6, 2021.

ii.2.2 Duration of the Confidentiality Obligation

Unless the relevant content through the normal channels (mainly refers to the preservation organs decided to disclose) public, lawyers should be permanently confidential from the time of access. Unlike the lawyers' duty of confidentiality of the client's information time to have both predecessor and successor^[35], the lawyer will not obtain any information in it before accessing it, so the obligation is only subsequent. If the sub-volume is unduly disclosed after the trial is finalized, the lawyer is also prohibited from revealing in any way what he or she has learned by having accessed the sub-volume. The improper disclosure has already caused a breach of confidentiality, and further dissemination by the lawyer would only add to the problem; he or she should cooperate with the authorities' recovery and protection measures to stop the spread of the contents of the sub-volume.

ii.2.3 Objects of the Confidentiality Obligation

In the current law, the lawyers' duty of confidentiality in the practice of lawyers' duty of confidentiality is not clear, the main question is whether lawyers need to the client and their families and other confidentiality? Some scholars advocate in the non-litigation business, consultant business and most of the civil agent, because the lawyer was informed of most of the information from the client and his family, so the client or family members of the information lawyers' duty of confidentiality, unless the client is a legal person, organization, or there is a need for authorization of the client, non-source of the client and his family members and other people's information should be kept confidential; In the criminal defense business, the lawyer to access the original file, investigation and evidence obtained information need only be limited to the original file, investigation and evidence obtained. The lawyer to consult the file, investigation and evidence obtained by the information only need to be limited to the client, the suspect, the defendant and his family to verify the scope of the case, the lawyers' duty of confidentiality to them^[36]. In the author's opinion, the lawyer is informed of the secrets of the sub-volume, basically will not come from the client and his relatives, and can not be used for

^[35] Li Qian: "The Dilemma of Lawyers' Professional Ethics--Taking the Duty of Confidentiality as a Perspective", published in "Rule of Law and Society", issue 6, 2021.

^[36] Si Li: "Lawyers' Duty of Confidentiality Related Theoretical Issues to Explore", published in "Henan University of Finance and Law Journal", issue 2, 2015.

the verification of the case to the client, the suspect or the defendant, etc., coupled with the secrets of the sub-volume of the man-made nature, sensitivity is strong, and can not be predicted the consequences of its leakage, therefore, unless obtaining the permission of the custodian of the sub-volume organs, lawyers shall not be disclosed to the secrets of the secrets learned through the sub-volume to any person, including the client.

ii.3 Granting Lawyers the Right to Object and Establishing a System for Reviewing

Sub-volumes

This set of review system on the one hand, to ensure that lawyers to supervise the effectiveness of the content of the sub-volume, to avoid the supervision of the form, so that lawyers really in the sub-volume proper review of the judicial reform play an important role; On the other hand, to improve the lawyer to fulfill the lawyers' duty of confidentiality of sub-volume of the enthusiasm to ensure that lawyers' right to supervise the confidentiality of the sub-volume of constraints on the sub-volume of confidentiality to prevent the sub-volume of the leakage. Finally, it is also necessary to avoid the lawyer's sub-volume supervisory power is too large.

The three kinds of materials in the court sub-volume mentioned above as typical, can set up the following **Court Sub-volume Review System**:

The materials pre-loaded into the sub-volume must be produced before the judgment is rendered, and the attorney may apply to the court for access to the materials before the final trial. Lawyers can object to the collegial court if they think there is improper after inspection, the collegial court shall submit the objection to the president for the first review, if the president thinks the objection is established, he shall organize and submit to the trial committee for the second review, if the trial committee thinks the objection is established, it will start the revision of the sub-volume to correct the producer's error, and if necessary, it can hold the relevant personnel responsible, if the improper content of the sub-volume involves the If the improper content of the sub-volume involves a higher court, the President of the Court shall submit the objection of the sub-volume to the President of the higher court, who shall initiate the review procedure of the objection of the sub-volume in the higher court; furthermore, if the President of the Court rejects the objection, the review shall be terminated; if the President of

the Court considers that the objection is established but the Trial Committee rejects the objection, the review shall be terminated. In addition, in order to avoid the trial committee discussion transcripts by the court trial committee review, if the lawyer against the trial committee transcripts objections, the president of the court shall submit the objections directly to the higher court trial committee for a one-time review.

Finally, for the construction of the court sub-volume review system, need to clarify two issues:

First, why the collegial court does not have the right to review the objection, but the president of the objection to the first review?

Because the collegial court is difficult to competent sub-volume objection review. The duty of the collegial panel is to hear, undertake is to ascertain the facts of the case, the correct application of the law, based on the special nature of the secret of the sub-volume, objections are likely to involve administrative matters, the president as the court's overall responsibility for all matters than the collegial panel is more competent to review the sub-volume.

Second, why choose the trial committee as the final organization of the lawyer sub-volume objection review?

The author believes that, despite the controversy of the trial committee system, but at this stage, the trial committee as the court's highest trial organization, the members represent the highest level of the court's business, and then combined with the *Court Organization Law* article 37^[37] on the function of the trial committee, the review of the sub-volume of objections to the review of the work itself belongs to the “major issues related to trial work “. Therefore, having the Trial Committee as the final review organization not only falls within the scope of the Trial Committee's functions as stipulated in the law, but also contributes to maintaining the quality of the review decisions made.

V. CONCLUSION

^[37] Article 37 of the *Organic Law of the People's Courts*: “The Trial Committee performs the following functions: (a) to summarize the experience of trial work; (b) to discuss and decide on the application of the law in major, difficult and complex cases; (c) to discuss and decide whether judgments, rulings and conciliations which have already entered into legal force in the Court should be retried; (d) to discuss and decide on other major issues relating to the work of the trial. Interpretations by the Supreme People's Court of issues belonging to the specific application of the law in trial work shall be discussed and adopted by the plenary session of the Trial Committee; the issuance of guiding cases may be discussed and adopted at a meeting of a specialized committee of the Trial Committee.”

As the core content of the court's sub-volume records of judgment approval, collegial court transcripts, and transcripts of the trial committee's discussions, their generation has been affected by systemic and court management deficiencies, resulting in the content of the sub-volume often lacking legitimacy. In order to maintain the legitimacy of the sub-volume, the need to reform the court sub-volume system. Compared to the abolition of the system and the idea of publicizing the sub-volumes put forward by some scholars, the path of promoting lawyers' right to read volumes to cover the sub-volumes, regulating lawyers' duty of confidentiality, and granting lawyers the right to object to the establishment of the court's review system of the sub-volumes is more realistic and feasible. By utilizing the internal oversight of the legal profession, this path will enable lawyers outside the system to effectively supervise the production of case files within the system.

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